

A [Mascarella]: Conversations -- I spoke to Owen infrequently. I've only had brief conversations with him. And my guess is that it was only relating to the payments, that the payments were being made or not being made. There was a few times when the payments were slow, that we sent out default letters, which probably -- You know, I can't remember every conversation I had with him but I assume he might have responded to one of those default letters.

[Mascarella deposition -- Page 34]:

Q. At some point, was a -- And I'm talking about the 2004 to 2005 time frame. Was a line of credit opened up for Little Isle IV?

A [Mascarella]: I believe so. That would -- It's my understanding the answer is yes.

Q. And do you recall who were signatories on that line of credit?

*A [Mascarella]: **I wasn't involved at that time on the lending side, so I don't know. I know that if it was set up in the business name -- I would only be speculating. So I don't know.***

[Mascarella deposition -- Page 35]:

*A [Mascarella]: We have a separate commercial lending department and a lender there **[Ed Wilson]** would have established the relationship on the lending side.⁴²*

Q. And during this time period, can you remember who would have been in that position?

A [Mascarella]: I don't. It changed a couple of times during when their relationship was initially started.

- Obviously -- Mascarella never concealed information from Nolan after verifying he spoke with Nolan on the phone about his LOC between 2003-06.

⁴² Ed Wilson –the Head of the Northern Trust Bank Lending Department – signed all Northern Trust documents; *unknown to Mascarella (in the 2015 Northern Trust Bank subpoena).*

- The government presented no first hand evidence from the people who handled the Northern Trust LOC accounts...that they were ever instructed by Kenner to “conceal” information from their own clients (governed by the 2001 Patriot Act)...

- Nolan's "epic memory failure" *cannot* make Kenner criminally liable for what his-own Northern Trust banker verified "*under oath*" – just because of Nolan's **CTE** or *faulty memory, confusion and mistakes* – 6 full years before he still could not remember his LOC in 2015 (*Tr.2065-66*).

Nolan's **CTE**-laden testimony in 2009 exposed his "*memory loss*" issues -- unrelated to Kenner's full transparency -- with Nolan and his wife who signed off on most of the family transactions (in evidence – including the specific 2006 LOC payments).⁴³

[Nolan May 2009 arbitration -- *Day 1 at 105*]:

Q: Is there ever an agreement in your life that you've ever read that you can identify here today? Have you ever taken the time on your own to read?

A [Nolan]: I can't think of any offhand.

[Nolan arbitration May 2009 -- *Day 1 at 109-110*]:

Q: You've testified that you've never read a document ever that you can think of sitting here today before you signed it. At any time in your lifetime has someone advised you to take the strategy of never reading a document when you sign it?

A [Nolan]: No.

[Nolan arbitration May 2009 -- *Day 5 at 1049*] –

Judge Meyerson & Nolan's attorney (Meeks):

Mr. Meeks: He [Nolan] admits that's his signature.⁴⁴ His testimony is he wasn't aware.

*Judge Meyerson: So somebody signs a statement that says, **Please grant Philip A. Kenner access to a line of credit for direct deposit***

⁴³ See Bates Stamp NOLAN0005249 [Ex.Z5] and NOLAN0005267 [Ex.Z6] – both turned over by Nolan in the 2009 Arbitration – and *not* in Kenner's possession after Standard Advisors' former assistant Myrick stole the corporate files in 2007. Myrick was working for Nolan and Jowdy by the time of the 2009 arbitration. In turn – for full transparency -- Kenner turned these exculpatory documents over to the SEC in 2011.

⁴⁴ Nolan *confirmed* signing his **one-page** *Letter of Authorization* with Northern Trust Bank to allow Kenner access to his LOC for the Little Isle 4 capital account in October 2004 (See Bates Stamp -- TNTC000048) [Ex.Z7].

into Little Isle 4. Doesn't somebody have to take responsibility for that?⁴⁵

Owen Nolan's October 24, 2004 Northern Trust *Letter of Authorization* specified to Northern Trust Bank (identical for all of the Hawai'i partners LOC investors) (*Bates Stamp -- TNTC000048*) [Ex.Z7]:

"Please allow Philip A. Kenner to access this outstanding LOC for direct deposit to the Little Isle IV account at Northern Trust. He is authorized to sign for the release of funds related to my LOC."

- *Owen Nolan cannot be a victim of concealment* – after his own Northern Trust private banker confirmed their independent communication -- and
- Nolan's wife paid the LOC fees in 2006 -- with help from Kenner's former assistant -- and their independent private banker from Wells Fargo [Ex.Z5] [Ex.Z6] [Ex.Z6a].

Owen Nolan also carried on a 5-day text communication (with several documented phone calls within) before independently signing his 4th LOC renewal package in 2007.

From Kenner to Nolan (conversation Day 1):

37	+14169970110 Owen Nolan*	12/23/2007 3:40:50 PM(UTC+0)	Sent	<i>I need to send you via FEDEX LOC docs from Northern Trust that MUST be signed and returned by the end of the year. Where are you the day after XMAS??</i>
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From Nolan to Kenner (conversation Day 1):

41	+14169970110 Owen Nolan*	12/23/2007 6:40:59 PM(UTC+0)	Read	What r the papers for
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⁴⁵ See *Horvath v. Banco Comercial Portugues, S.A. and Millennium BCP Bank, N.A.* See also *PaineWebber Incorporated v. Bybyk*, 81 F.3d 1193; 1996 U.S. Appx. LEXIS 8728. ("...a party's **failure to read** a duly incorporated document will not excuse the obligation to be bound by its terms"); See also *Ecoline, Inc. v. Local Union No. 12 of the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO*, 271 Fed. Appx. 72; 2008 U.S. Approximately. LEXIS 6390, ("In general, individuals are charged with knowledge of the contents of documents they sign" and "a person who signs a written contract is bound by its terms regardless of his or her **failure to read** and understand its terms".)

42	+14169970110 Owen Nolan*	12/23/2007 6:41:26 PM(UTC+0)	Read	And why the sudden rush
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From Kenner to Nolan (conversation Day 1):

38	+14169970110 Owen Nolan*	12/23/2007 7:09:24 PM(UTC+0)	Sent	<i>The papers are for your Line of Credit at Northern Trust. The Bank sent them to me for the renewal of the LOC on friday and said they MUST be signed and returned by end of year. Its not just you. All of the guys have to do it. I don't make these rules. Where can I send them for next Wednesday or thursday fedex delivery?? PK</i>
39	+14169970110 Owen Nolan*	12/23/2007 7:12:23 PM(UTC+0)	Sent	Can you also plz ask Diana for the ppwk I faxed a while ago for VortalOptics?? I need you to <i>sign and fax</i> them to me at 480.314.3795. Then, we can have your shares registered. <i>Your ppwk is the last of the guys to get done.</i> Happy Holidays. I hope the kids are well!!

From Nolan to Kenner (conversation Day 3):

45	+14169970110 Owen Nolan*	12/26/2007 5:26:24 AM(UTC+0)	Read	Westin bayshore vancouver we leave tommorrow
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From Kenner to Nolan (conversation Day 3):

42	+14169970110 Owen Nolan*	12/26/2007 1:34:06 PM(UTC+0)	Sent	It already was sent to Calgary. It will be there when you return. Please just sign and return asap. Happy Holidays!!
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- As part of the government's Rule 16 production – they produced Kenner's FedEx records and AMEX account records. It confirmed Kenner sent Nolan the 2007 renewal docs via FEDEX on 12-26-07 (*Bates Stamp -- BNK-AMEX-1638*) [Ex.Z8]:

12/26/07	FEDEX# 831050944488 MEMPHIS TN	31.14
	NO REFERENCE INFOT3H0Z7	
	TO: OWEN NOLAN CA	
	FROM: PHIL KENNER 85259	
	001 FEDEX ENVELO 1LB AWB831050944488	
	FedEx #1-800-622-1147	

From Nolan to Kenner (conversation Day 5):

46	+14169970110 Owen Nolan*	12/28/2007 6:04:48 PM(UTC+0)	Read	<i>Where's the package that needs signed plus jp needs 200000 for toronto settlement <u>where r we getting that money since everything is tied up</u></i>
47	+14169970110 Owen Nolan*	12/28/2007 6:06:04 PM(UTC+0)	Read	He said in order to write it off it needs to be paid this year
48	+14169970110 Owen Nolan*	12/28/2007 6:07:04 PM(UTC+0)	Read	<i>Call me need to discuss this</i>

- Kenner and Nolan spoke about the LOC paperwork on the phone at this point – per the following message the next day from Nolan to Kenner...

From Nolan to Kenner (conversation Day 6):

49	+14169970110 Owen Nolan*	12/29/2007 3:46:45 AM(UTC+0)	Read	<i>Can u call me <u>back</u> I have a question about <u>papers</u></i>
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- As part of the government's Rule 16 production – they produced Kenner's FedEx records and AMEX account records. It confirmed Nolan returned his LOC documents directly to Northern Trust Bank utilizing Kenner's FedEx account – after his conversation with Kenner (Bates Stamp -- BNK-AMEX-1640) [Ex.Z8]:

FEDEX#1-800-622-1147			
12/31/07	FEDEX# 831050944477 MEMPHIS TN		39.73
	NO REFERENCE INFO85016		
	TO: NORTHERN TRUST US		
	FROM: OWEN NOLAN		
	001 FEDEX ENVELO 1LB AWB831050944477		
	FedEx #1-800-622-1147		
01/01/08	HMS HOST - SLC-AIRPQSALT LAKE CIT UT		26.57
	8015752611		

- Please note that Nolan's text on December 28, 2007 acknowledged:

"where r we getting that money [\$200,000 for his agent's bill] since everything is tied up"

- This is clear confirmation that Nolan knew in December 2007 that his ~\$2 million bond account at Northern Trust was pledged for the LOC.

- The December 2007 texts proved that it was wholly impossible for Nolan to be unaware of his Northern Trust Bank LOC &/or the paperwork he had signed for 4+ years to date...

Nolan used Kenner's FedEx after they spoke on the phone (*supra*) to return his signed paperwork to Northern Trust Bank in December 2007.

- This was over 2 years *before* Nolan's first documented amnesia symptoms (CTE) occurred during the 2009 arbitration, *albeit known at all times as a fraud by his own attorney who deposed Mascarella just prior to the arbitration.*

Control of the Hawai'i partners (Little Isle 4) capital:

The Little Isle 4 By-Laws "**controlled**" the "**use of funds**" once the *authorized* transfer from Owen Nolan (and the other Hawai'i LOC investors) was granted [Ex.P].

This is simple business-practice law, ignored by the government to claim, "*if a specific transaction was not remembered thru their failed memory test*", there was a fraud perpetrated on the investors, via "*concealment*". The "*memory test*" standard was unreasonable and cannot be the basis for a concealment prosecution that only 4 of the 26 Hawai'i partners claimed, they "*could not remember*" (same as Peca, *supra*).

Accentuating the unreasonable standard is the fact that:

- 19 of the 26 Hawai'i partners sued Jowdy to recover the funds starting in 2008 (in Mexico, Arizona, Nevada and California),
- Several Hawai'i partners gave civil testimony to confirm their knowledge,
- Several Hawai'i partners proffered to the FBI about their knowledge,
- Several Hawai'i partners signed affidavits to confirm the Jowdy loans and their underlying knowledge, and
- Several Hawai'i partners possessed the actual 2004 Hawai'i-Jowdy loan agreement...

But – in 2015, the government was able to elicit from **Michael Peca** (until his recanting – *Tr.498-99*), **Owen Nolan**, **Darryl Sydor** (*See footnote xx, supra*), and **Steve Rucchin** that they "*could not remember*" the Jowdy loans.

Although the government did not name **Turner Stevenson** as a superseding indictment victim – Stevenson gave "*under oath*" testimony to the 2011 SDNY Grand Jury as well – confirming his unfettered knowledge of the Jowdy loans and the "*group*" decision to make the deal (*See footnote xx, supra*).